

participate, provide information to the subapplicant/subgrantee, and take all required actions necessary for the completion of the grant application and the implementation of property acquisition activities in accordance with this part.

Subpart B—Requirements Prior to Award

§ 80.7 General.

A project involving property acquisition or the relocation of structures for open space is eligible for hazard mitigation assistance only if the subapplicant meets the pre-award requirements set forth in this subpart. A project may not be framed in a manner that has the effect of circumventing the requirements of this subpart.

§ 80.9 Eligible and ineligible costs.

(a) *Allowable costs.* Eligible project costs may include compensation for the value of structures, for their relocation or demolition, for associated land, and associated costs. For land that is already held by an eligible entity, compensation for the land is not an allowable cost, but compensation for development rights may be allowable.

(b) *Pre-award costs.* FEMA may fund eligible pre-award project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project proposal. These costs can only be incurred during the open application period of the respective grant program. Costs associated with implementation of the project but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and other project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify the subapplicant and FEMA of all benefits that it receives, anticipates, or has available from other sources for the

same purpose. FEMA will reduce the subgrant award by the amounts available for the same purpose from another source.

(d) *Negligence or other tortious conduct.* FEMA acquisition funds are not available where an applicant, subapplicant, other project participant, or third party's negligence or intentional actions contributed to the conditions to be mitigated. If the applicant, subapplicant, or project participant suspects negligence or other tortious conduct by a third party for causing such condition, they are responsible for taking all reasonable steps to recover all costs attributable to the tortious conduct of the third party. FEMA generally considers such amounts to be duplicated benefits available for the same purpose, and will treat them consistent with paragraph (c) of this section.

(e) FEMA mitigation grant funds are not available to satisfy or reimburse for legal obligations, such as those imposed by a legal settlement, court order, or State law.

§ 80.11 Project eligibility.

(a) *Voluntary participation.* Eligible acquisition projects are those where the property owner participates voluntarily, and the grantee/subgrantee will not use its eminent domain authority to acquire the property for the open space purposes should negotiations fail.

(b) *Acquisition of improved properties.* Eligible properties are those with at-risk structures on the property, including those that are damaged or destroyed due to an event. In some cases, undeveloped, at-risk land adjacent to an eligible property with existing structures may be eligible.

(c) *Subdivision restrictions.* The land may not be subdivided prior to acquisition except for portions outside the identified hazard area, such as the Special Flood Hazard Area or any risk zone identified by FEMA.

(d) *Subapplicant property interest.* To be eligible, the subapplicant must acquire or retain fee title (full property interest), except for encumbrances FEMA determines are compatible with open space uses, as part of the project implementation. A pass through of funds from an eligible entity to an ineligible entity must not occur.